

ESTTA Tracking number: **ESTTA683302**

Filing date: **07/13/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	National Football League
Granted to Date of previous extension	07/12/2015
Address	345 Park Avenue New York, NY 10154 UNITED STATES
Attorney information	Kristin H. Altoff Morgan, Lewis & Bockius LLP 1111 Pennsylvania Ave NW; Attn: TMSU Washington, DC 20004 UNITED STATES trademarks@morganlewis.com, kaltoff@morganlewis.com, fgordon@morganlewis.com Phone:202.739.5093

Applicant Information

Application No	86339567	Publication date	01/13/2015
Opposition Filing Date	07/13/2015	Opposition Period Ends	07/12/2015
Applicant	The Night Run, Inc. 3117 E. Hazelwood Street Phoenix, AZ 85016 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2012/05/08 First Use In Commerce: 2012/05/08
All goods and services in the class are opposed, namely: Organizing, arranging, and conducting running events

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	846056	Application Date	12/19/1966
Registration Date	03/12/1968	Foreign Priority Date	NONE


Word Mark	SUPER BOWL
Design Mark	
Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 1966/12/06 First Use In Commerce: 1966/12/06 EQUIPMENT (OR APPARATUS) SOLD AS A UNITFOR PLAYING A FOOT-BALL-TYPE BOARD GAME

U.S. Registration No.	882283	Application Date	03/07/1969
Registration Date	12/09/1969	Foreign Priority Date	NONE
Word Mark	SUPER BOWL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1967/01/15 First Use In Commerce: 1967/01/15 ENTERTAINMENT SERVICES IN THE NATURE OFFOOTBALL EXHIBITIONS		

U.S. Registration No.	2133100	Application Date	11/16/1995
Registration Date	01/27/1998	Foreign Priority Date	NONE
Word Mark	SUPER BOWL CONCERT SERIES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1996/01/25 First Use In Commerce: 1996/01/25 entertainment services, namely, a continuing annual series of musical and comedy performances		


U.S. Registration No.	2954420	Application Date	01/29/2004
Registration Date	05/24/2005	Foreign Priority Date	NONE
Word Mark	SUPER BOWL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1971/01/30 First Use In Commerce: 1971/01/30 men's, women's and children's clothing,namely, fleece tops and bottoms, caps, headwear, T-shirts, sweatshirts, shorts,tank tops, [jeans,] sweaters, pants, jackets, turtlenecks, [jumpsuits,] golf shirts, [woven shirts,] knit shirts,jerseys, [wristbands, warm up suits,]wind resistant jackets, [raincoats, parkas, ponchos,		

	gloves, ties, suspenders,] cloth bibs, sleepwear, namely, [robes,] night shirts and pajamas, [mittens,] knit hats and caps, scarves [, aprons, headbands, ear muffs, underwear, sneakers and slippers]
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U.S. Registration No.	3138590	Application Date	08/09/2005
Registration Date	09/05/2006	Foreign Priority Date	NONE
Word Mark	SUPER BOWL		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1980/01/01 First Use In Commerce: 1980/01/01 Football helmets, cell phone covers, c[ell phone straps, special holsters and accessories in connection thereof for carrying cellular telephones, cell phone face plates,] decorative magnets, prerecorded [compact discs, audio tapes, video-tapes and] DVDs all featuring the sportof football, computer mouse pads</p> <p>Class 014. First use: First Use: 1980/01/01 First Use In Commerce: 1980/01/01 Jewelry, watches, clocks, pins, earrings, necklaces, bracelets, belt buckles made primarily of precious metals, charms,money clips made primarily of precious metals, tie pins, rings, collectible coins, commemorative coins</p> <p>Class 016. First use: First Use: 1975/01/01 First Use In Commerce: 1975/01/01 Posters, trading cards, series of booksrelating to football, magazines relating to football, [newsletters relating tofootball,] notepads, stickers, bumper stickers, [paper pennants] and greeting cards; printed tickets to sports gamesand events; pens [and pencils, rub on decorative transfers,] note paper, pictorial prints, [picture postcards,] artpictures, [wrapping paper,] paper table cloths, [paper napkins,] paper party invitations, [paper gift cards; papergift bags,] paper decorations, collectible cards; collectible card and memorabilia holders, souvenir programs for sports events</p> <p>Class 028. First use: First Use: 1975/01/01 First Use In Commerce: 1975/01/01 Toys and sporting goods, namely, plush toys, stuffed animals, play figures, golf balls, [golf club covers,] footballs, toy banks, playing cards, Christmas tree ornaments, balloons, jigsaw puzzles, miniature helmets</p>		

U.S. Registration No.	3343714	Application Date	05/16/2007
Registration Date	11/27/2007	Foreign Priority Date	NONE
Word Mark	SUPER BOWL		

Design Mark	<h1>SUPER BOWL</h1>
Description of Mark	NONE
Goods/Services	Class 038. First use: First Use: 1969/01/12 First Use In Commerce: 1969/01/12 Television broadcasting services; television transmission services; distribution of television programming to cable and satellite television systems; distribution of television programs for others; cable television broadcasting; radio broadcasting; broadcasting programming on the Internet; information transmission via electronic communications networks; transmission of information through video communication systems; broadcasting services and provision of telecommunication access to video and audio content provided via a video on demand; streaming of audio material on the Internet; streaming of video material and podcasts on the Internet; electronic delivery of images and photos via a global computer network; providing multiple-user access to a global computer information network for the purpose of participating in interactive polling in the field of football; wireless communications services, namely transmission of text, graphics, data and entertainment information to mobile phones; mobile media and entertainment services in the nature of electronic transmission of entertainment media content

U.S. Registration No.	3373804	Application Date	10/29/2004
Registration Date	01/22/2008	Foreign Priority Date	NONE
Word Mark	SUPER BOWL XL		
Design Mark			
Description of Mark	The mark consists of large stylized letters XL intersected by a rectangular box, similar to an odometer with the words SUPER BOWL bordered by a star on		

	each side.
Goods/Services	<p>Class 016. First use: First Use: 2006/01/00 First Use In Commerce: 2006/01/00 [Posters, trading cards, series of books relating to football, magazines relating to football, stickers, bumper stickers, paper pennants, pictorial prints, art pictures, collectible cards, souvenir programs for sports events]</p> <p>Class 025. First use: First Use: 2005/08/00 First Use In Commerce: 2005/08/00 [caps, headwear,] t-shirts, [sweatshirts, jackets, golf shirts, woven shirts, knit shirts, jerseys, ties, cloth bibs, sleepwear, pajamas, knit hats and caps, socks]</p>

Attachments	76572704#TMSN.png(bytes) 78688906#TMSN.png(bytes) 77182909#TMSN.png(bytes) 78508489#TMSN.png(bytes) SUPERB OWL Notice of Opposition.pdf(515709 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kristin H. Altoff/
Name	Kristin H. Altoff
Date	07/13/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE NATIONAL FOOTBALL LEAGUE,

Opposer,

v.

THE NIGHT RUN, INC.,

Applicant.

In re Application Serial No. 86/339,567
Mark: SUPERB OWL

Published: January 13, 2015

Opposition No. _____

NOTICE OF OPPOSITION

Opposer National Football League (“Opposer” or “NFL”) believes it will be damaged by registration of the designation SUPERB OWL shown in Application Serial 86/339,567 (“Applicant’s SUPERB OWL Designation”), filed by The Night Run, Inc. (“Applicant”) for use in connection with services in Class 41. Opposer hereby opposes registration of Applicant’s SUPERB OWL Designation under the provisions of Sections 2(a), 2(d), 13, 43(a) and 43(c) of the Trademark Act of July 5, 1946 (the “Lanham Act”), 15 U.S.C. §§ 1052(a), 1052(d), 1063, and 1125(c).

As grounds for opposition, Opposer alleges that:


1. The NFL is an unincorporated association, organized under the laws of New York, with its principal place of business at 345 Park Avenue, New York, New York, 10154. The NFL is comprised of thirty-two active member clubs (“Member Clubs”), each of which owns and operates a professional football team, providing entertainment services to the public in the form of competitive professional football games.
2. For many years, and long before either the July 16, 2014 filing date of Applicant’s application or the May 8, 2012 alleged date of first use of Applicant’s SUPERB OWL

Designation, Opposer has used the mark SUPER BOWL and variations thereof (collectively, the “SUPER BOWL Marks”) in connection with its business of organizing, conducting and promoting the NFL and the NFL’s championship game.

3. For many years, and long before either the July 16, 2014 filing date of Applicant’s application or the May 8, 2012 alleged date of first use of Applicant’s SUPERB OWL Designation, Opposer and its authorized business partners, sponsors, and/or licensees have used the SUPER BOWL Marks on or in connection with the sale of a wide variety of services and goods related to the NFL and the NFL’s championship game.

4. In addition to the NFL’s significant common law rights in the SUPER BOWL Marks by virtue of the continuous use of one or more of the SUPER BOWL Marks since at least as early as December 6, 1966, the NFL owns the following registrations, among others, issued by the United States Patent and Trademark Office (“PTO”) for the SUPER BOWL Marks for use in connection with entertainment services in the form of football games and exhibitions and promotional goods and services:

Registration Number	Mark	International Class(es)	Date of First Use
846,056	SUPER BOWL	28	12/06/1966
882,283	SUPER BOWL	41	1/15/1967
2,133,100	SUPER BOWL CONCERT SERIES	41	1/25/1996
2,954,420	SUPER BOWL	25	1/30/1971
3,138,590	SUPER BOWL	9, 14, 16, 28	1/1/1975 (Cl. 16 and 28); 1/1/1980 (Cl. 9 and 14)
3,343,714	SUPER BOWL	38	1/12/1969

Registration Number	Mark	International Class(es)	Date of First Use
3,373,804	<p>SUPER BOWL XL and Design</p> 	16, 25	<p>1/2006 (Cl. 16) 8/2005 (Cl. 25)</p>

5. The registrations referenced above are valid and subsisting, in full force and effect, and constitute *prima facie* and/or conclusive evidence of the NFL's exclusive right to use the marks in commerce in connection with the goods and services specified in the registrations.

6. The following registrations are incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and constitute conclusive evidence of the NFL's exclusive right to use the marks in commerce in connection with the goods and services specified in the registrations: Registration Nos. 882,283; 2,133,100; 2,954,420; 3,138,590; 3,343,714; and 3,373,804.

7. During the longstanding, widespread and continuous use of the SUPER BOWL Marks, Opposer and its authorized business partners, sponsors, and licensees have expended considerable time, effort, and money in advertising and publicizing the sale of goods and services bearing the SUPER BOWL Marks.

8. Opposer and its authorized business partners, sponsors, and licensees have sold and offered for sale goods and services bearing the SUPER BOWL Marks in a trading area of broad geographical scope encompassing the United States, including its territories.

9. Opposer and its authorized business partners, sponsors, and licensees have sold and offered for sale goods and services bearing the SUPER BOWL Marks in numerous channels of trade.

10. The SUPER BOWL Marks are symbolic of the extensive goodwill and consumer recognition that Opposer has established through substantial expenditures of time, effort and other resources in the advertising and promotion of the goods and services Opposer sells and offers for sale under the SUPER BOWL Marks.

11. As a result of Opposer's regular, extensive and well-publicized use, the SUPER BOWL Marks are famous in the United States and are associated exclusively with Opposer and its high quality goods and services.

12. On July 16, 2014, Applicant filed an application for federal registration of Applicant's SUPERB OWL Designation shown in Application Serial No. 86/339,567.

13. The application for Applicant's SUPERB OWL Designation covers "Organizing, arranging, and conducting running events" in Class 41.

14. Applicant's SUPERB OWL Designation, Application Serial No. 86/339,567, was published for opposition in the *Official Gazette* on January 13, 2015.

15. The Trademark Trial and Appeal Board extended the opposition period for the Applicant's SUPERB OWL Designation by granting Opposer's timely requests for extensions. The opposition period for Application Serial No. 86/339,567 expires on July 12, 2015. Because the deadline fell on a Sunday, Opposer timely files this opposition.

16. Opposer's rights to the SUPER BOWL Marks are superior to those of Applicant.

17. Opposer's SUPER BOWL Marks are famous and became famous before the filing date or any use of Applicant's SUPERB OWL Designation.

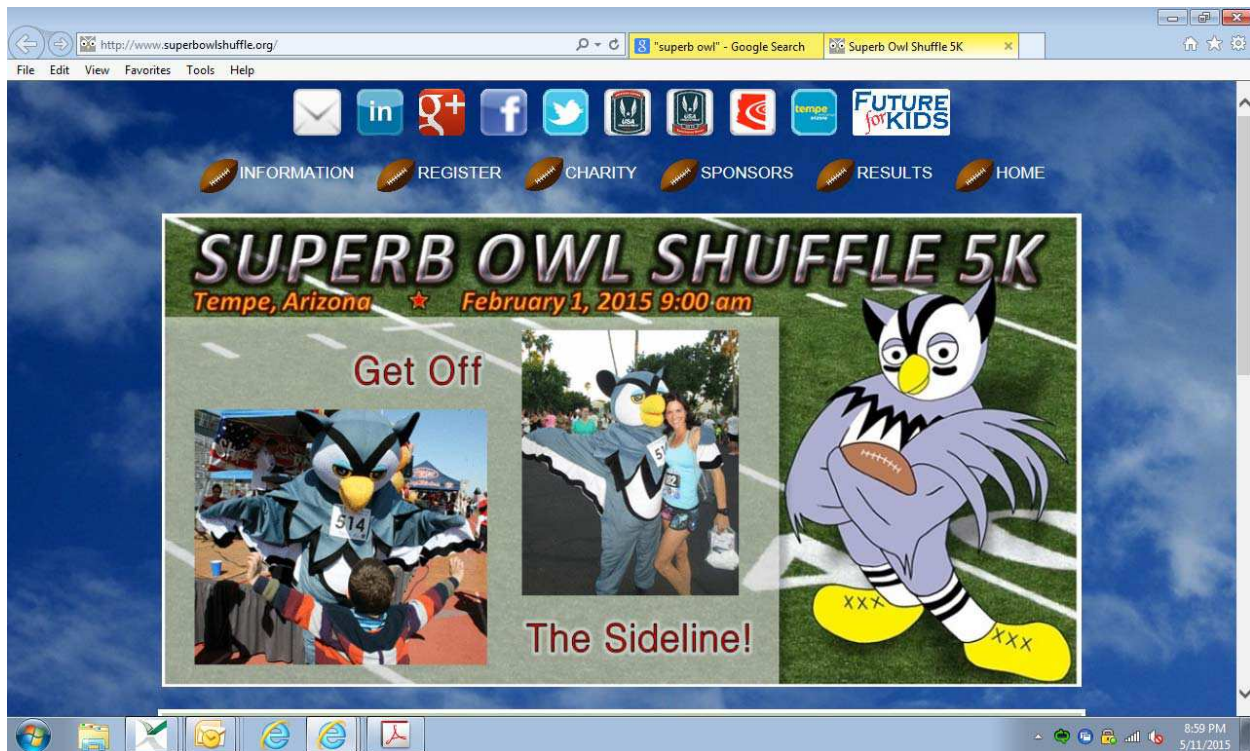
18. Applicant's application for and any use of Applicant's SUPERB OWL Designation are without the consent, authorization, or license of Opposer.

19. Applicant's SUPERB OWL Designation is identical to the NFL's SUPER BOWL mark, with only a difference in the spacing between the letters.

20. Upon information and belief, Applicant is using Applicant's SUPERB OWL Designation to trade off of the substantial goodwill associated with the NFL's SUPER BOWL Marks.

21. Screenshots below from Applicant's website demonstrate use of Applicant's SUPERB OWL Designation in connection with football indicia, including images of footballs, the image of a football field, and the slogans "Get Off the Sideline," "Come Tailgate With Us" and "Start Superb Owl Sunday Morning right with a football-themed tailgate party...."





22. As further evidence of Applicant's intent to trade off of the substantial goodwill in the SUPER BOWL Marks, Applicant's "Superb Owl Shuffle 5K" event took place on February

1, 2015 in Tempe, Arizona, a suburb of Phoenix. The NFL's Super Bowl XLIX was played on February 1, 2015 at the University of Phoenix Stadium in Glendale, Arizona, also in suburban Phoenix.

23. Even Applicant's domain name (superbowlshuffle.org) and Facebook moniker ("Superb Owl Shuffle") relate to the NFL's SUPER BOWL Marks, since the song "Super Bowl Shuffle" was a 1985 rap hit recorded by the players of the NFL's Chicago Bears during the year that the team won Super Bowl XX.

24. Opposer believes it will be damaged by registration of Applicant's SUPERB OWL Designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that Applicant's use and registration of the subject designation will falsely suggest a connection between Applicant and Opposer to the damage of Opposer, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

25. Opposer believes it will be damaged by registration of Applicant's SUPERB OWL Designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that the subject designation so resembles the SUPER BOWL Marks used by Opposer in the United States as to be likely, when used on or in connection with the services identified in the application for Applicant's SUPERB OWL Designation, to cause confusion, mistake or to deceive consumers, with consequent injury to Opposer and to the public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

26. Opposer believes it will be damaged by registration of Applicant's SUPERB OWL Designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of Applicant's SUPERB OWL Designation is likely to dilute the distinctive quality

of Opposer's famous SUPER BOWL Marks, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer believes it will be damaged by registration of Applicant's SUPERB OWL Designation shown in Application Serial No. 86/339,567 and respectfully request that the registration sought by Applicant be refused.

Dated: July 13, 2015

Respectfully submitted,

By: /s/ Kristin H. Altoff

Michael F. Clayton

Kristin H. Altoff

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Attorneys for Opposer

NATIONAL FOOTBALL LEAGUE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition has been sent via first class mail, postage pre-paid on this 13th day of July 2015 to:

TRICIA SCHAFFER
THE NIGHT RUN, INC.
3117 E HAZELWOOD ST
PHOENIX, ARIZONA 85016

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THE NIGHT RUN, INC.
6108 N 77TH PLACE
SCOTTSDALE, ARIZONA 85250

/Kristin H. Altoff/